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AUG -1 1997

FCC MAIL ROOM

July 28, 1997

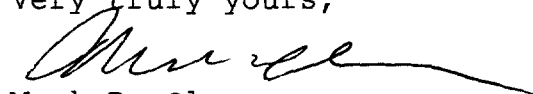
Office of the Secretary
Federal Communications Commission
1919 M Street N.W.
Washington D.C. 20554

RE: Docket No. CC 95-155

Dear F.C.C. Secretary:

Please kindly file the enclosed Common Carrier reply comment petition with copies. Please return the extra conformed copy in the self-addressed stamped envelope. Thank you.

Very truly yours,



Mark D. Olson
Attorney at Law

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Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

AUG - 1 1997

In the Matter of)

FCC MAIL ROOM

RULES PROMOTING)

EFFICIENT USE,)

FAIR DISTRIBUTION)

OF TOLL FREE NUMBERS)

REPORT NO. CC 97-123

CC DOCKET NO. 95-155

FURTHER COMMENTS AND REPLY

The National Association of Telecommunications End-Users ("NATE"), on behalf of itself and its members, hereby submits the following further comments and reply in the above encaptioned matter in response to the Commission's Public Notice dated July 2, 1997. Due to the shortened comment period, this Petition is submitted by telephone facsimile to the Common Carrier Bureau on July 28, 1997, with the hard copy paper filing to follow. Accordingly, we hereby present the following:

INTRODUCTION

Without acknowledging an underlying "ownership" by subscribers to their "vanity numbers", it will be impossible for the Commission to fashion a fair and equitable telecommunications policy that complies with established rights to "number portability", and complies with the intent of the Telecommunications Act of 1996.

A sound national telecommunications policy can only be based upon a fair, equitable and orderly allocation of telecommunications services, which includes a reasonable expectation of a continuity of service. With respect to telephone numbers, the Congress and the F.C.C. have determined that once allocated, it serves the public interest that telecommunications end-users be afforded "number portability," a right which has been found to be only meaningful if end-users have the right to retain their telecommunications numbers. This right creates an expectation of continued service, and to that extent, it creates an intangible property right that is coupled with an F.C.C. enforced public covenant and legal commitment that no carrier may interfere with that right. Regardless of what you call this legal right and expectation, it includes fundamental components that are akin to "property" and are undeniably proprietary in nature.

AN INFORMAL TELEPHONE SURVEY OF COMMON CARRIER BEHAVIOR

Let's take a few minutes to see what happens when we take a telephone tour of the major carriers and their toll-free customer service departments. To do this, we performed an informal telephone survey in the week prior to this petition by calling the toll-free service centers of the various major

carriers that handle toll-free service for small business customers. Posing as a small business interested in toll-free services, we began each call by asking each of these carriers the following questions: (1) "What does 'number portability' mean?" (or, "can you explain what 'number portability' is?"); (2) "I want to track my advertising nationwide. Is there a limit on the number of toll-free 888 numbers I can order?"; and (3) "I have been talking with someone about buying their 800 number. They are with another carrier. If I buy it, can I move it to [this carrier]"

In performing this informal telephone survey, it should be noted that the major common carriers expend millions of dollars on their customer service departments. Every word, answer, description and explanation that the carriers give to the public and their customers are carefully scripted and constructed to be accurate, lawful, and caller friendly. With scripted responses written at the 8th grade level or lower, and written in accordance with company policy and legal requirements, no customer representative is allowed to give an answer beyond specific parameters. Most carriers also randomly record and/or monitor their customer's calls to assure the accuracy and quality of their customer service representatives answers. So, accordingly, we assume that the answers we received represent the company policy of the carriers we spoke to, and that their answers would be similar to all other callers.

We have performed this informal telephone survey several times a year since portability in May 1993. Almost invariably, even to this very day, the only consistent 8th grade level explanation of "number portability" is that "you, the customer, own your toll-free number and can move it to any [carrier] you want....nobody can take it away from you." In our most recent survey, since the Commission's Report and Order of April 1997, some of the carrier's appear to try to dance around this answer, but invariably the answer comes back to affirming and reassuring the customer that he has "total customer control over his 800 and 888 numbers"...that he can move them to any carrier at any time, and that nobody can take them away as long as the bill is paid!

The carriers that we surveyed were also uniformly cooperative and helpful when we told them we were planning to "buy an existing 800 number." They readily offered to provide the necessary RespOrg forms and Letters of Authorization necessary to effectuate the transfer, and seemed quite eager to "get the business."

When we asked the carriers about acquiring more toll-free 888 numbers, the major carriers appeared to have no restrictions or limitations. We asked them if we could order one-hundred (100) 888 numbers and they indicated that it would be "no problem." One major carrier's representative even got a supervisor involved and indicated that it could be easily done and it would only cost five dollars (\$5.00) per month for all 100 toll-free numbers.

THE COMMISSION'S RULE WILL HELP UNSCRUPULOUS CARRIERS IN THEIR EFFORTS TO EXTORT VALUABLE 800 NUMBERS FROM SMALL BUSINESS CUSTOMERS; THESE CUSTOMERS WILL BE FORCED TO MIGRATE TO SECOND RATE 888 NUMBERS WHILE LOSING THEIR 800 NUMBER CALLS AND CUSTOMERS

Our informal telephone study should illustrate what's going on in the real world, and perhaps point the way to the numerous flaws in the Commission's Report and Order. The Commission's Order (and 47 CFR 52.107 in particular) directly assaults existing toll-free customers who have "more than

one number," but makes no similar restriction regarding the actual *allocation* of multiple 888 toll-free numbers to new customers applying for new service.

We believe it is unreasonable for the Commission to allow existing telecommunications end-users to be selectively threatened by carriers who are now empowered by this rule, while these carriers continue to issue 888 numbers under an allocation scheme that continues to promote and encourage the subscription of multiple toll-free numbers. In examining the practical application of the Commission's rules, it appears that once a toll-free subscriber loses its multiple toll-free 800 numbers through 47 CFR 52.107, it can call any carrier to order several hundred second rate 888 numbers the very next day. Of course, nobody cares, since the only goal was to force the subscriber to give up its valuable 800 numbers. To that degree, the Commission's ruling appears to have the ulterior motive of forcing small business customers to give up their valuable 800 numbers and create a forced migration to the inferior 888 class. In addition, it appears that the Commission did not utilize reasonable regulatory alternatives that would have minimal impact on existing small businesses, focusing on end-user use and not allocation.

The fact that carriers are still selling 888 numbers in bulk to customers, while existing customers tremble in fear of losing their multiple 800 numbers, indicates that the Commission has completely ignored creating rules that regulate the fair, efficient and orderly *allocation* of toll-free numbers. Instead, the Commission has applied faulty logic to justify a "rational basis" to regulate the *use* of toll-free numbers. Now, somehow, we are supposed to believe that attacking the usage rights of existing toll-free customers will effectively regulate the fair allocation of toll-free numbers and prevent "number exhaustion." This is nonsense.

As we have discussed in previous pleadings on this matter, we believe the Commission has overstepped its statutory authority to regulate the fair *allocation* of number resources by overreaching and extending its authority to telecommunications end-users and how they choose to *use* their toll-free numbers. In doing so, the Commission attempts to play "Big Brother" by making every telecommunications end-user with "more than one toll-free number" a *de facto common carrier*, subjecting them to the same regulatory scheme and oversight as common carriers. We believe that the intent of Congress, as expressed by the plain meaning of the Telecommunications Act of 1996, did not intend to subject telephone customers to such draconian governmental monitoring in the "public interest".

Are telecommunications end-users with multiple toll-free numbers now going to be extorted and blackmailed into giving up valuable 800 numbers and intellectual property via selective threats from common carriers? Will these carriers attempt to push customers against their will into accepting 888 and 877 substitutes? In its Report and Order, the F.C.C. has effectively destroyed "portability" rights by giving carriers the power to selectively police end-users. Meanwhile, the major Carriers and RespOrgs continue to warehouse numbers, assign 888 numbers in bulk to dummy customers, and hoard numbers with phoney "PIN" plans that may contain as few as one customer per toll-free number. Regardless of the F.C.C. rules, these carriers continue to enjoy an unfettered arrogance to do as they please, backed by the comfort of their large size and superior legal muscle. The only real loser is the small business telecommunications end-user, who does not have the expertise or legal budget to effectively challenge the strong-arm threats of their carriers.

**TELEPHONE NUMBERS HAVE NO INTRINSIC VALUE;
A VANITY NUMBER'S BEAUTY IS IN THE EYE OF THE BEHOLDER.**

In the Commission's recently published "Letter of Admonishment to TWC Communications" (dated June 13, 1997), the Commission acknowledges that "certain numbers have a value that result from, inter alia, either numerical characteristics that make the number simple to remember or marketing efforts that make the number widely recognizable, or both. These numbers are known as "Vanity Numbers", and it is not unusual for businesses to invest significant resources in the marketing of Vanity Number(s)."

We agree with this statement by the Commission. We are pleased that the Commission appears to recognize that straight numeric numbers, not just numbers with "silly spellings", can be classified as "Vanity Number(s)". Many companies, including NATE members, have spent considerable amounts of money and time marketing both vanity and "easy-to-remember, easy-to-dial" numeric 800 numbers. We appreciate that the Commission appears to recognize this expanded definition.

We also appreciate the fact that the Commission's language in this letter appears to acknowledge that "it is not unusual" for significant resources to be invested in the marketing of multiple "Vanity Number(s)." This is an absolute fact and a modern reality of business today.

Underlying all of this is the fact that the F.C.C. and the Common Carriers have entered into a public covenant and constructive trust to provide services and "number portability" rights to all toll-free customers in a manner that gives customers a continuing expectation that service will not be interrupted for any reason, except for non-payment of a lawful charges. Even the non-paying customer who is disconnected for non-payment appears to enjoy a public covenant in which the toll-free numbers can be reclaimed and reconnected within a four month period after disconnection.

Stability in these fair and equitable rules require that Common Carriers and RespOrgs not be empowered to selectively interfere with these rights. But, unfortunately, that is exactly what has begun to happen since the Commission's April 1997 Report and Order.

Recently, at least one major carrier has issued a directive to its account representatives and sale agents warning them of possible jail and \$1 million fines for toll-free number "brokering" and "hoarding." This directive contains no definitive guidelines, and simply leaves it to its hourly wage and salaried employees, all of whom are non-lawyers, to try to guess who is "legitimate" and who isn't. Toll-free customers with multiple toll-free numbers are now faced with worrisome inquiries and threats from their sales account representatives, and an underworld of finks, snitches and "phone Nazis" is now being created, with one primary goal in mind: to take away the valuable 800 numbers of small business customers. The practical legal effect is to deny the public fair, equitable and orderly access to number portability and the public switched networks. It should also be noted that the carrier's are using the Commission's rules to target customers who "excessively exercise" number portability rights, "red flagging" these customers as a possible number "hoarders" or "brokers".

CONCLUSION

We believe a public covenant has been created with a condition that customers should be able to retain their multiple toll-numbers once they are fairly and equitably allocated under the long-standing "first come, first served" scheme. We agree that telephone numbers have no intrinsic value in themselves. Value comes only from the efforts of the subscriber after allocation. Once allocated, a body of statutory and common law rights apply. To that extent, taking away a subscriber's "vanity" numbers, whether it be a name or numeric, constitutes an unlawful governmental taking of private intellectual property. When the Commission states that subscribers have no property or ownership rights in their existing telecommunications numbers, the Commission looks like "the emperor with no clothes." This "legal fiction" is unsustainable and will continue to be an impediment to the creation of common sense regulations that are "rationally based" and in the "public interest."

NATE members have legitimate legal interests that have been threatened by the Commission's rulings, and which will result in substantial and irreparable harm if not corrected. If the Commission does not acknowledge and codify an underlying "ownership" and property interest of toll-free subscribers to their lawfully acquired "vanity numbers," new telecommunications services and small businesses will be discouraged from development, the capital markets for such businesses will disappear, and it will be impossible for the Commission to fashion a fair and equitable telecommunications policy. It will also be impossible for the Commission to truthfully certify to the Congress that it is forbearing from the unnecessary regulation of small telecommunications services and businesses, or that the "number portability" rights specifically prescribed by the Telecommunications Act of 1996 and previous F.C.C. rulemakings will be protected.

Respectfully submitted,

NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS END-USERS ("NATE")

DATED: July 28, 1997

By: 

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Attorney & Executive Officer
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Telecommunications End-Users

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